



SFUND RECORDS CTR
2166-92781

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, Ca. 94105-3901

SFUND RECORDS CTR
88141917

SEPTEMBER 4, 1992

CERTIFIED MAIL # P918 448 762
RETURN RECEIPT REQUESTED
File Number: ~~111-0397~~
111.0446

Thomas C. Gricks, III
Law Department
Westinghouse Electric Corporation
Gateway Center
Pittsburgh, PA 15222

RE: Westinghouse Electric Corporations's Response to
EPA's April 13, 1992 Information Request Letter,
including Claim of Confidentiality

Dear Mr. Gricks:

The U.S. Environmental Protection Agency ("EPA") has received your response on behalf of the Westinghouse Electric Corporation ("Westinghouse") dated June 1, 1992 to our April 13, 1992 Information Request and determined that it is incomplete. This letter preliminarily identifies the questions Westinghouse did not answer completely and again asks that you respond to them. By again requesting a response, EPA is not waiving the right to seek imposition of penalties, as outlined in our April 13, 1992 letter, for Westinghouse's failure to respond completely to the April 13, 1992 Information Request.

There may be additional questions for which Westinghouse's response is determined to be incomplete. Based on Westinghouse's June 1, 1992 letter, it has been difficult to determine whether Westinghouse has fully answered each of the questions, or whether Westinghouse provided some information despite its objections and withheld other information which would be responsive to the request. EPA reserves the right to seek complete responses to any incompletely answered questions in the future and to seek imposition of penalties, as outlined in our April 13, 1992 letter, for any failure to respond completely to the questions asked in April 13, 1992 Information Request.

EPA also wishes to note that it does not agree with the numerous objections contained in your letter of June 1, 1992. Most of the objections are vague and unsupported. Westinghouse has attempted to impose criteria on EPA's ability to request information pursuant to 42 U.S.C. Section 9604 and 42 U.S.C. Section 6972 which Congress did not choose to impose upon the Agency's ability to request information pursuant to those statutes. Westinghouse has also asserted that EPA's definitions are overly broad when in fact this is not the case.

Westinghouse did not respond completely to the following question. A complete response to this question must be submitted to EPA within fifteen (15) days of your receipt of this letter. Please follow the instructions in the original Information Request letter on how to respond, including submission of any comments regarding disclosure to EPA's authorized representatives of any information in the response that Westinghouse claims is confidential. The time period for submitting such comments shall be fifteen days from Westinghouse's receipt of this letter.

Question 11

None of the subparts of this question were answered completely. You responded that "Westinghouse may have transported, used, purchased, generated, stored, treated, disposed or otherwise handled" the materials in Exhibit C (emphasis added). The Information Request asked about which hazardous materials you actually did transport, use, etc. In addition, there was nothing in your response about the time period during which each hazardous material was transported, used, etc. This information was requested in the Information Request.

Claim of Confidentiality

In addition, because you claimed a portion of your response as confidential, we are providing an opportunity for you to substantiate your confidentiality claims pursuant to 40 C.F.R. Section 2.204. Please submit a substantiation of all claims of confidentiality to this office within fifteen (15) days of your receipt of this letter. For each document that you claimed as confidential, your response must separately address the following points enumerated in 40 C.F.R. Section 2.204(e):

1. The portions of the information alleged to be entitled to confidential treatment;
2. The period of time for which confidential treatment is desired (e.g. until a certain date, until the occurrence of a specific event, or permanent);
3. Measures taken by you to guard against the undesired disclosure of the information to others;
4. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;
5. Pertinent confidentiality determinations, if any, by EPA or other Federal agencies, and a copy of any such determinations or reference to it, if available; and
6. Whether you assert that disclosure of the information would be likely to result in substantial harmful effects on your

business's competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

If we receive your response postmarked within fifteen (15) days of your receipt of this notice, we will review your claim together with your comments and determine whether or not the information you have designated is entitled to confidential treatment pursuant to 40 C.F.R. Section 2.205. If we do not receive a response within fifteen (15) days of your receipt of this notice, we shall construe your failure to furnish timely comments as a waiver of your confidentiality claim.

Please direct any legal inquiries regarding the substantiation of your confidentiality claim and extensions of time (pursuant to 40 C.F.R. Section 2.205(b)(2)) to prepare such substantiation to:

Marcia Preston
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
(415) 744-1388

Please direct the written substantiation itself to:

Chris Stubbs
South Coast Groundwater Section (H-6-4)
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
(415) 744-2248

With respect to information which you submit in response to this letter, including information that pertains to your confidentiality claim, Westinghouse may assert a business confidentiality claim covering part or all of the information, in the manner described in 40 C.F.R. Section 2.203(b). Such information will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B; 41 Fed. Reg. 36902 (September 1, 1976). If no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to Westinghouse. See also, 40 C.F.R. Section 2.205(c).

The information regarding where to direct any inquiries regarding an extension of time for the submission of information substantiating your pending confidentiality claim is provided as required by 40 C.F.R. Section 2.204(e)(1). With respect to EPA's reiteration of our request for the information we originally requested in April of this year, EPA believes that the time period

provided for the original response was reasonable. By not providing this information in response to EPA's original Information Request, Westinghouse has been in violation of 42 U.S.C. Section 9604 for more than two months. EPA is disinclined to grant any extension of the time for Westinghouse to respond to this request, absent extraordinary circumstances.

Thanking you in advance for your prompt attention to this matter.

Sincerely,


Keith A. Takata
Deputy Director for Superfund

cc: Chris Stubbs, H-6-4
Marcia Preston, ORC

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<p>● SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.</p> <p>Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. <u>The return receipt fee will provide you the name of the person delivered to and the date of delivery.</u> For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.</p> <p>1. <input type="checkbox"/> Show to whom delivered, date, and addressee's address. (Extra charge) 2. <input type="checkbox"/> Restricted Delivery (Extra charge)</p>	
<p>3. Article Addressed to: THOMAS C. GRICKS, III LAW DEPARTMENT WESTINGHOUSE ELECTRIC CORPORATION GATEWAY CENTER PITTSBURGH, PA 15222</p>	<p>4. Article Number P 918 448 762 111.0446</p> <p>Type of Service:</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise</p> <p>Always obtain signature of addressee or agent and <u>DATE DELIVERED</u>.</p>
<p>5. Signature — Addressee X</p>	<p>8. Addressee's Address (ONLY if requested and fee paid)</p>
<p>6. Signature — Agent X</p>	
<p>7. Date of Delivery 9/19/89</p>	

PS Form 3811, Apr. 1989

*U.S.G.P.O. 1989-238-815

DOMESTIC RETURN RECEIPT